IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel W.A. DREW EDMONDSON, et al. **PLAINTIFFS**

v. **CASE NO.: 05-CV-00329 TCK-SAJ**

TYSON FOODS, INC., et al **DEFENDANTS**

TYSON DEFENDANTS' MOTION FOR LEAVE TO EXCEED NUMERICAL LIMITATION ON REQUESTS FOR ADMISSION

Defendants Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc. and Cobb-Vantress, Inc. (collectively "Tyson Defendants"), respectfully request, pursuant to LCvR 36.1, leave to exceed the numerical limitation on Requests for Admission and to serve Plaintiffs with the Requests for Admission attached hereto as Exhibit A.

I. INTRODUCTION

This is an extraordinarily complex case. Plaintiffs' First Amended Complaint sets out a variety of legal claims and factual allegations relating to the entire million-acre Illinois River Watershed. The process of narrowing and testing Plaintiffs' broad allegations has already generated a number of discovery disputes as Defendants seek to uncover the facts relating to Plaintiffs' claims.

Under Local Rule of Civil Procedure 36.1, the four Tyson Defendants would be entitled to propound one hundred requests for admission. By requesting leave to propound the attached additional requests for admission, the Tyson Defendants believe they can expedite the discovery process while simultaneously reducing the discovery burdens on the parties and the Court. Granting the Tyson Defendants leave to exceed the limit of twenty-five requests for admission per party will narrow the issues in this case,

and thereby reduce trial time and avoid unnecessary expenditures of the parties' and the Court's time and resources on matters over which there is no dispute.

Leave to exceed the limitation on requests for admission also is necessary in this case due to Plaintiffs' obstinate refusal to provide any meaningful information about their claims pursuant to Federal Rules of Civil Procedure 26(a) (Initial Disclosures), 33 (Interrogatories) and 34 (Requests for Production). In addition, on October 16, 2006, Plaintiffs rejected the Defendants' Proposed Case Management Order, which is a widely-accepted order in large environmental and toxic tort cases that simply sets forth an orderly procedure by which Plaintiffs should come forward with the basic proof that supports their claims. In sum, Plaintiffs refuse to comply with their discovery obligations and refuse to produce the *prima facie* evidence the law requires them to produce in order to satisfy their burden of proof on all their claims.

II. ARGUMENT

Federal Rule of Civil Procedure 36 places no limit on the number of requests for admission a party may propound. *See* FED. R. CIV. P. 36. Nevertheless, this district has adopted a local rule requiring leave of court before serving more than twenty-five requests for admission. LCvR 36.1. The authority for this limitation is Rule 26. *See* Fed. R. Civ. P. 26(b)(2) ("By order or local rule, the court may also limit the number of requests under Rule 36."). Rule 26, however, also grants this Court authority to permit additional requests for admission in appropriate cases.

Additional discovery generally is allowed under Rule 26(b)(2) unless it is unreasonably cumulative or burdensome considering the circumstances of the case. *Estate of Manship v. U.S.*, 232 F.R.D. 552, 558-59 (M.D. La. 2005); *American*

Chiropractic Assoc. v. Trigon Healthcare, Inc., 2002 WL 534459, *3-4 (W.D.Va. March 18, 2002). In determining whether discovery is burdensome, this Court examines "whether the burden and expense the proposed discovery outweighs its likely benefit, taking into account . . . the importance of the issues at stake in the litigation and the importance of the proposed discovery in resolving the issues." *Estate of Manship*, 232 F.R.D. at 559 (quoting FED. R. CIV. P. 26(b)(2).) Given the nature of requests for admission, the burden on the responding party is not great. Requests for admission are "not intended, as in the case of interrogatories, directed at similar matters, to ask the opposing party for a detailed response." *Diederich v. Department of the Army*, 132 F.R.D. 614, 619 (S.D.N.Y. 1990). Requests for admission generally set forth facts "singly, so that the party called upon to make answers need not write an essay in reply." *Thalheim v. Eberheim*, 124 F.R.D. 34, 35 (D. Conn. 1988) (quoting 4A James Wm. Moore, *Moore's Federal Practice* ¶ 36.05[2] at 51 (1987)). As the Court will see in reviewing the proposed Requests for Admission attached as Exhibit A, the Tyson Defendants' Requests for Admission pointedly address the elements of Plaintiffs' claims, knowledge of which should be readily available to Plaintiffs. Under Rule 36, Plaintiffs need only admit or deny each request. Thus, the Tyson Defendants' proposed requests for admission do not place an undue burden on Plaintiffs.

While the burden on Plaintiffs to respond is negligible, the benefit to Defendants and this Court from granting leave to serve the proposed Requests for Admission is substantial. The utility of requests for admission, especially in complex cases, is well recognized. "Admissions are sought, first to facilitate proof with respect to issues that cannot be eliminated from the case, and secondly, to narrow the issues by eliminating

those that can be." *Audiotext Communications Network v. US Telecom, Inc.*, 1995 WL 625744 (D. Kan. Oct. 5, 1995) (quoting Fed. R. Civ. P. 36 advisory committee notes (1970 Am.)). Thus, requests for admission ultimately "reduce the costs of litigation by eliminating the necessity of proving facts that are not in substantial dispute, narrow the scope of disputed issue, and facilitate the presentation of cases to the trier of fact." *T. Rowe Price Small-Cap Fund v. Oppenheimer & Co.*, 174 F.R.D. 38, 43 (S.D.N.Y. 1997); *see also Concerned Citizens of Belle Haven v. Belle Haven Club*, 223 F.R.D. 39, 44 (D. Conn. 2004) ("Requests for admission are intended to save litigants time and money, which would otherwise have to be spent unnecessarily to prove certain facts at trial, or to establish certain facts through complex and costly discovery procedures, such as interrogatories, depositions or document requests.") "Requests for admission may cover issues of law or ultimate fact, thereby delineating the scope of an opponent's claims." *Audiotext*, 1995 WL 625744, at p. *2.

All parties benefit from a narrowing of the issues and claims in complex litigation involving amorphous claims. Agreement among the parties to this case is a rarity, but both Plaintiffs and Defendants agree that "this is a complex case." Joint Status Rpt., p. 7 (Dkt. No. 372). This complexity is, in large part, the result of Plaintiffs' broad allegations and wide-ranging claims. For example, Plaintiffs allege in shotgun fashion that hundreds of unidentified poultry growers who contract with the thirteen "poultry integrators" named as defendants have caused contamination of unspecified areas of the 1,000,000 acre Illinois River Watershed ("IRW"). *See generally* First Am. Complt. (Dkt. No. 18). According to Plaintiffs, the contamination is virtually unlimited, encompassing soils, surface water, groundwater, sediments and biota. *See* First Am. Complt., ¶¶ 1, 4,

30, 57 (Dkt. No. 18). Likewise, Plaintiffs do not specify the chemicals or substances they claim has caused the harm. Plaintiffs allege only that the Defendants somehow are the source of phosphorus / phosphorus compounds, nitrogen / nitrogen compounds, copper / copper compounds, zinc / zinc compounds, arsenic / arsenic compounds, microbial pathogens and hormones. *See* First Am. Complt., ¶¶ 58, 59 (Dkt. No. 18). Plaintiffs further allege that this laundry list of substances have caused unspecified injuries to the State's "natural resources" and substantially endangered the health of unspecified individuals inhabiting the IRW. Based on these general and vague allegations, Plaintiffs have asserted ten different causes of action based on various state statutes, state regulations, federal statutes, state common law doctrines and even federal common law. *See generally,* First Am. Complt. (Dkt. No. 18.).

The proposed Requests for Admission are designed to narrow the issues in this case to those matters which are truly in dispute. *See* Ex. A, Defs. Proposed Requests for Admission. This, in turn, will eliminate costly and unnecessary discovery. These requests seek to establish basic facts directly relevant to the allegations of the First Amended Complaint and the elements of proof for the parties' causes of action and defenses. *Id.* It is well recognized that requests for admission directed at factual matters "help delineate the scope of necessary discovery." *Audiotext*, 1995 WL 625744, at *2.

Where, as here, a party refuses to provide basic information in Rule 26(a) disclosures and in response to Rule 33 interrogatories and Rule 34 requests for production, lifting the limitation on requests for admission is especially appropriate. Rule 26(b)(2) requires that this Court consider whether "the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought" in

deciding whether to permit Defendants to exceed discovery limitations. *Estate of Manship*, 232 F.R.D. at 559 (citing Fed. R. Civ. P. 26(b)(2)(ii)).

Here, it is uncontradicted that the Tyson Defendants have not received any meaningful discovery from Plaintiffs since this action was commenced. Defendants have used virtually every discovery device provided by the Federal Rules in order to obtain basic factual information concerning Plaintiffs' claims, including the *prima facie* proof on which those claims are based. Defendants have served interrogatories under Rule 33 and requested the production of documents under Rule 34. Plaintiffs have stubbornly and disingenuously refused to provide the information and documents requested. *See generally* Cobb-Vantress First Mot. to Compel (Dkt. No. 743). Similarly, Plaintiffs' continue to withhold from its Rule 26(a) Initial Disclosures the basic information, data and records which they contend supports their allegations. *See generally* Cobb-Vantress Mot. for Leave to File Suppl. Br. in Support of Motion to Compel (Dkt. No. 925); and Cobb-Vantress Reply in Support of Mot. for Leave to File Suppl. Br. in Support of Motion to Compel (Dkt. No. 942.)

More than one and one-half years into this case, Plaintiffs still refuse to provide even the most basic information and evidence relating to their claims. Thus far, Plaintiffs have responded to every attempt to discover the bases for their claims either through a promise of some future conduct or with a hyper-technical construction of the Rules governing the particular discovery device at issue. Moreover, the Defendants proposed a case management order that is routinely entered by courts throughout this country in large environmental and toxic tort cases involving multiple parties. Such a case management order simply provides for Plaintiffs to come forward in an orderly fashion

with the *prima facie* evidence required as a matter of law to support their claims. On October 16, 2006, Plaintiffs summarily rejected Defendants' Proposed Case Management Order.

The Tyson Defendants' proposed Requests for Admission are their latest attempt to compel Plaintiffs simply to come forward with the proof the law requires of them. Defendants have shown great patience to date, and have refrained from filing a motion pursuant to Fed. R. Civ. P. 37, including for dismissal. Granting the Tyson Defendants leave to exceed the LCvR 36.1's limitation on Requests for Admission is necessary in light of Plaintiffs' recalcitrant and obstructionist behavior in responding to prior discovery requests from Defendants.

III. CONCLUSION

For the foregoing reasons, Tyson Foods, Inc., Tyson Poultry, Inc., Tyson Chicken, Inc. and Cobb-Vantress, Inc. respectfully request, pursuant to LCvR 36.1, leave to exceed the numerical limitation on Requests for Admission. More specifically, Defendants seek leave of this Court to serve upon Plaintiffs the set of Requests for Admission attached hereto as Exhibit A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the 18th day of October 2006, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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I also hereby certify that I served the attached documents by United States Postal Service, proper postage paid, on the following who are not registered participants of the ECF System:

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